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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,653	10/10/2001	Andrew D. Bicek	760-49	9912
7590	01/06/2005		EXAMINER	NGUYEN, VI X
Ludomir A. Budzyn HOFFMANN & BARON, LLP 6900 Jericho Turnpike Syosset, NY 11791			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/974,653	BICEK ET AL.	
	Examiner	Art Unit	
	Victor X Nguyen	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on 03 November 2004.
- 2a)  This action is FINAL. 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 17-24 and 39 is/are pending in the application.
  - 4a) Of the above claim(s) 1-16 and 25-38 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 17-24 and 39 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/3/2004 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-24 and 39 are rejected under 35 U.S.C. 102 (b) as being anticipated by Buirge et al (U.S. 5,693,085).

Regarding claims 17-20 and 39, Buirge et al disclose in fig 7, a stent graft for insertion into target site within a vessel of a patient, including: a main stent (10) has a radially-expandable body, at least one support stent (15), and a sheath (12) between the body, and the support stent where no portions of the main stent are in contact with the support stent, and the sheath is not bonded to the support stent. Note that the support stent in fig. 7 can generate a force with the main stent to hold the sheath in place

Regarding claims 18-20, Buirge et al disclose the support stent (15) is capable of plastically deformed (see col.6, lines 19-47). The sheath (12) disposes radially outwardly or inwardly of the stent.

Regarding claims 21-22, Buirge et al disclose the support stent has an axial length which is less than the axial length of the body (fig.7).

Regarding claims 23-24, Buirge et al disclose sheath is selected from the group consisting of a polymeric/a biomaterial sleeve (see col. 5, lines 10-60). The sheath is also treated with a drug selected from the group consisting of biocompatible material (see col. 5, lines 32-67).

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M.).

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen  
Examiner  
Art Unit 3731

Vn *W*  
12/30/2004



**JULIAN W. WOO**  
**PRIMARY EXAMINER**